



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

JUN 21 2012

Bureau of Land Management  
Barstow Field Office, Attn: Rich Rotte  
2601 Barstow Road  
Barstow, California 92310

Subject: Draft Environmental Impact Statement for the Calnev Pipeline Expansion Project, San Bernardino County, CA and Clark County, NV (CEQ# 20120074)

Dear Mr. Rotte:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA has rated the Draft Environmental Impact Statement as EC-2, Environmental Concerns – Insufficient Information (see enclosed "*Summary of Rating Definitions*"). Although we support many elements of BLM's Preferred Alternative, we are concerned about potential direct and cumulative impacts to sensitive wetland and riparian resources. The DEIS provides conflicting information regarding the acreage of wetlands that would be affected by the project. We recommend that the Final Environmental Impact Statement describe the types and acreages of Clean Water Act jurisdictional waters that could be filled by project activities; include a robust discussion of all avoidance and mitigation measures proposed for the Project; and demonstrate consistency with the *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*.

Our concern is heightened given the many proposed transportation, utility and commercial/residential development projects along sections of the utility corridor. We recommend that the cumulative impacts analysis in the Final EIS include consideration of the Rosena Ranch and proposed Lytle Creek developments. We also recommend that the Final EIS include an analysis of the growth inducement potential of increased petroleum delivery to the Las Vegas region that would be facilitated by the Project.

The enclosed Detailed Comments elaborate on the above concerns and provide additional recommendations regarding protection of air quality, biological, and cultural resources. In particular, we recommend that BLM consider expanding the number of tribes invited for consultation on the project. We also recommend that BLM work closely with the U.S. Fish and Wildlife Service in the identification of lands for habitat compensation for the Project's impacts, in order to ensure that compensatory lands are of comparable or superior quality and are suitable compensation for the unique habitat on the Project's right of way.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one (1) hard copy and one (1) CD ROM to the address above (mail code: CED-2). If you have any



questions, please contact me at (415) 972-3521 or Scott Sysum, the lead reviewer for this project, at (415) 972-3742 or [sysum.scott@epa.gov](mailto:sysum.scott@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen Martyn Goforth', with a long horizontal flourish extending to the right.

Kathleen Martyn Goforth  
Manager  
Environmental Review Office (CED-2)  
Communities and Ecosystems Division

Enclosure:

- (1) Summary of EPA Rating Definitions
- (2) EPA's Detailed Comments
- (3) Distribution List

cc: Distribution List



## **SUMMARY OF EPA RATING DEFINITIONS\***

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement.

### **ENVIRONMENTAL IMPACT OF THE ACTION**

#### ***“LO” (Lack of Objections)***

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### ***“EC” (Environmental Concerns)***

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### ***“EO” (Environmental Objections)***

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### ***“EU” (Environmentally Unsatisfactory)***

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. The EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality.

### **ADEQUACY OF THE IMPACT STATEMENT**

#### ***Category “1” (Adequate)***

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### ***Category “2” (Insufficient Information)***

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### ***Category “3” (Inadequate)***

The EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.



**US EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE CALNEV PIPELINE EXPANSION PROJECT, SAN BERNARDINO COUNTY, CA AND CLARK COUNTY, NV, JUNE 21, 2012**

Waters of the United States

*Jurisdictional Determination, Impacts and Permitting – Clean Water Act Section 404*

The Draft Environmental Impact Statement states the need for the project proponent to obtain a Clean Water Act Section 404 permit (either a U. S. Army Corps of Engineers Nationwide Permit or an Individual Permit) for dredge and fill activities (p. 1-14). A jurisdictional delineation will need to be prepared, and approved by the Corps, in order to accurately determine location, type, and extent of impacts to waters of the U.S. as part of the application for such a permit. This information will be a critical part of the alternatives analysis required by the CWA section 404(b)(1) Guidelines and the determination of the least environmentally damaging practicable alternative by the Corps, after impact avoidance, minimization and compensatory mitigation are taken into account.

The DEIS states that the proposed 234.4 mile pipeline alignment was surveyed and that all wetlands were assumed to be jurisdictional under section 404. The DEIS further states that, for Impact BIO-7: Impact to Federally protected wetlands, the proposed Project would result in adverse impacts to 138.9 acres of wetlands at 766 locations along the length of the pipeline project (p. 3.7-95). Later the DEIS states that the potential area of impact to wetlands is less than 1.5 acres and that the effects of the proposed project would be less than significant (p. 3.7-96). It is unclear whether 138.9 acres of wetlands or less than 1.5 acres of wetlands would be impacted.

The document identifies potential impacts to wetlands from crossing the Mojave River at La Delta but later says that these impacts are unlikely because the U.S. Fish and Wildlife Service National Wetlands Inventory does not classify any wetlands at this area. Please be aware that the NWI is a coarse scale wetlands inventory and that it is not a substitute for a field level jurisdictional delineation. In addition, based on a review of Google Earth imagery and EPA staff's recent observation of wetlands in the Mojave River approximately six river miles upstream, it is very possible that there are wetlands present at the La Delta crossing.

*Recommendations:*

A qualified wetlands biologist(s) should conduct a jurisdictional delineation of all waters of the U.S. within the project footprint, and the results should be included as part of the FEIS. The FEIS should identify the types of wetlands and waters present, the extent of potential impacts, and opportunities for further impact avoidance and appropriate compensatory mitigation.

The FEIS should include a table that defines the impacts to jurisdictional waters for each proposed alternative and distinguishes direct, secondary, permanent and temporary impacts.

*Alternatives/Avoidance:*

Calnev has identified modifications to the Proposed Project that would reduce impacts to waters; these are described under both the Modified Route Alternative (Alternative 2) and the Agency Preferred Alternative (Alternative 3), including the Wagon Train Horizontal Directional Drilling (HDD)



Alternative, which would avoid impacts to 6 or 7.6 acres<sup>1</sup> of high quality riparian habitat in the Cajon Wash. Instead of digging a trench through the riparian area, the proponent would use directional drilling under Interstate 15, which would be preferable from an impact avoidance perspective.

While EPA supports the use of HDD over trenching to cross the river, we are concerned with the impacts to this important resource from the proposed approximately 810-foot long plank access road, described in BIO-7, that would be temporarily installed over the river, potentially affecting 1.5 acres of wetlands. BLM should consider whether alternative access points may be available that would avoid or reduce these impacts.

The DEIS compares the Proposed and Zzyzx Alternatives between Mileposts 137 and 138 and makes a finding in several places<sup>2</sup> that “the Zzyzx Alternative route would not be preferable to the segment of the Proposed Project that it would replace, with respect to biological resources” because it would follow the alignment of the existing 8-inch and 14-inch pipelines and disturb the active wash while the Proposed Project would avoid the wash. However, the discussion (p. 3.7-99) goes on to say that “construction of the existing 8-inch and 14-inch pipelines, and use of the existing maintenance road, within the Proposed route have disturbed this area” and that “construction of the new pipeline along the [Zzyzx] Alternative route would require disturbance to approximately 1.5 miles of pipeline ROW in an area that has not been previously disturbed.” These statements appear contradictory and inconsistent with the findings of the DEIS.

Impacts to riparian and wetland vegetation are not listed in Table 3.7-4 even though the DEIS mentions impacts, or potential impacts, to these vegetation types in several places.

*Recommendations:*

The FEIS and Record of Decision should include commitments to implement all opportunities to avoid impacts to aquatic resources, such as directional drilling. Similar commitments should be included in any future applications for a CWA 404 permit and 401 Water Quality Certification.

The FEIS should clarify how the Proposed Alternative avoids aquatic resource impacts better than the Zzyzx Alternative.

The FEIS should include wetlands and riparian vegetation types in Table 3.7-4, *Impacts on Native Vegetation Within the Proposed Project Area*, and clarify the acreage of impacts to these resources to better inform the BLM’s understanding of potential impacts to aquatic resources.

For the temporary road crossing at La Delta, the FEIS should evaluate alternative access points for both sides of the river.

To prevent oil leaks from pipeline damage, all channel crossings should be set to depths that will avoid exposure and damage to the pipeline from channel incision. For the proposed crossings at Lytle and Cajon Washes, the applicant should consider hydrologic and geomorphic studies done in this area as part of the proposed Lytle Creek Residential and Commercial Development in

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<sup>1</sup> pp. 2-55 & 3.5-35 identify 6 acres while p. 3.7-98 identifies 7.6 acres of riparian impacts.

<sup>2</sup> Zzyzx Alternative would result in increased impacts in an active wash (pp. 2-55, 3.5-35, 3.7-99)



Rialto. While the EPA does not endorse the validity of this data, it may help with understanding physical changes in the channels over time and projected trends that would inform the proper depths of any pipeline crossings.

*Compensatory Mitigation:*

The FEIS should describe possible compensatory mitigation measures for any unavoidable impacts to wetlands and other aquatic resources. The DEIS states that the Proposed Project will impact wetlands at 766 channel crossings, but does not discuss options for replacing any lost functions of these water bodies except for on-site habitat restoration or off-site habitat compensation to a level considered less than significant (p. 3.7-55). However, the document further says that the implementation of several minimization measures, including native vegetation reseeding and restoration are “contingent upon landowner approval.” The EPA is concerned that the applicant may not have adequate opportunities to compensate for lost aquatic resource functions due to vegetation impacts without prior landowner approval.

For jurisdictional waters, a compensatory mitigation plan that complies with the Corps and EPA 2008 Compensatory Mitigation Rule will need to be prepared and submitted for Corps approval prior to approval.

*Recommendations:*

The FEIS should include a discussion of specific mitigation options to compensate for any lost aquatic resource functions. The discussion should include the likelihood that native vegetation restoration at the 766 channel crossings would be approved by land owners, and alternative off-site options, such as mitigation banks and in-lieu fee programs, if on-site restoration is not an option.

The FEIS should discuss the intended contents of a compensatory mitigation plan for jurisdictional waters that would be included with a future CWA 404 permit application.

Air Quality

EPA commends the BLM for incorporating fugitive dust control measures to limit impacts from particulate matter 10 microns or less in size (PM<sub>10</sub>), and mitigation measures to address exhaust emissions. Although EPA supports incorporating such mitigation strategies, we advocate minimizing disturbance to the natural landscape as much as possible so that the need for measures to reduce fugitive dust is eliminated or minimized. Implementation of additional mitigation measures could reduce the Project's emissions.

*Recommendations:*

The EPA recommends the FEIS include the following additional measures to reduce emissions of criteria air pollutants and hazardous air pollutants (air toxics):

- Reduce land disturbance activities as much as possible so that natural, stable soil conditions remain.
- Limit vehicle speeds to 25 miles per hour on stabilized unpaved roads as long as such speeds do not create visible dust emissions.



- Limit vehicle speeds to 10 miles per hour or less on unpaved areas within construction sites on unstabilized (and unpaved) roads.
- Post visible speed limit signs at construction site entrances.
- Develop a construction traffic and parking management plan that maintains traffic flow and plan construction to minimize vehicle trips.
- Include provisions for monitoring fugitive dust in the fugitive dust control plan and initiate increased mitigation measures to abate any visible dust plumes.

### Cumulative Impacts

The analysis of cumulative impacts does not include the approved, and under construction, Rosena Ranch development (formerly North Lytle) as an existing impact, nor the proposed Lytle Creek South Development as a foreseeable impact in the Lytle-Cajon Wash area. This is especially important to possible changes in channel hydrology and stability that could result from these projects due to changes in stormwater runoff, discharge and channel cross-section upstream of the proposed pipeline crossings.

#### *Recommendation:*

Tables 3.18-1 and 2, for existing and reasonably foreseeable impacts, should be updated in the FEIS to include the Rosena Ranch and proposed Lytle Creek developments. The potential effects of these projects on downstream pipeline channel crossings should be discussed.

### Growth Inducing Effect

Growth inducing effects are a subset of indirect effects that are typically defined as effects that foster economic or population growth. Growth inducement could result if a project establishes substantial new employment opportunities or if it would remove obstacles to population growth (e.g. construction of a new petroleum products pipeline). The DEIS states that the Project would increase the amount of petroleum products delivered to the Las Vegas region, but states the Project would not be growth inducing because in the absence of the Project, the increased amount of petroleum products would be delivered by other means (e.g. truck or rail) (p 3-19-7). The EPA disagrees that the availability of alternate delivery methods negates the growth inducing potential of the Project.

#### *Recommendation:*

The FEIS should include an assessment of the potential growth inducing effects of the increased petroleum delivery to the Las Vegas region.

### Biological Resources

The DEIS indicates a Biological Opinion will be needed for impacts to endangered or threatened species, habitats and avian species (p. 1-16). The DEIS further states that it is expected that the U.S. Fish and Wildlife Service will issue a Biological Opinion for the Project for impacts to any federally listed species (p 3.7-44). It is unclear whether USFWS or the California Department Fish and Game have reviewed or commented on the adequacy of surveying and monitoring of biological resources conducted to date. The EPA is concerned with potential impacts to vegetative communities and to threatened and endangered species. The BO will play an important role in informing the decision on which alternative to approve and what commitments, terms, and conditions must accompany that approval.



*Recommendations:*

We urge BLM to coordinate with USFWS on the timing of the FEIS and the Biological Opinion. At minimum, the FEIS should provide an update on the consultation process. We strongly recommend including the Biological Opinion as an appendix.

Mitigation and monitoring measures that result from consultation with USFWS to protect sensitive biological resources should be included in the FEIS and, ultimately, the ROD.

Discuss, in the FEIS, coordination with USFWS and California Department of Fish and Game and their review of the surveying, monitoring, and reporting protocols completed to date. Include a commitment to consistent application of USFWS and CDFG supported methods in future protection and mitigation efforts.

Cultural Resources, National Historic Resources and Consultation with Tribal Governments

EPA commends the BLM for early consultation for tribal cultural resources as required under Section 106 of the National Historic Preservation Act. The DEIS states that consultation is ongoing with 15 Indian tribes, but, to date, no cultural resources to which the tribes attach religious or cultural significance have been identified within the Area of Potential Effect.

According to the DEIS, based on the level of disturbance associated with the project, it is anticipated that there will be an adverse effect to historic properties. Therefore, it is anticipated that a Programmatic Agreement will be implemented to ensure the Project complies with Section 106 and implementing regulations (36 CFR 800) (p. 3.8-40). The PA would establish the area of potential effect for the proposed project, propose a treatment plan for identified resources that cannot be avoided, describe procedures for unanticipated discoveries, set forth procedures for tribal consultation, and suggest general mitigation measures.

*Recommendations:*

Consider expanding the number of tribes invited for consultation to include the Augustine Reservation, Borona Band of Mission Indians, Cabazon General Council, Campo General Council, Cuyapaipe General Council, Jamul Indian Village, La Jolla Band, La Posta Band, Los Coyotes Band of Indians, Manzanita Tribal Council, Mesa Grande Band, Pala Band of Mission Indians, Pauma Band Tribal Council, Pechanga Indian Reservation, Quechan Indian Tribe, Ramona Band of Cahuilla, Ricon Band of Luiseno Indians, San Pasqual Band, Santa Rosa Band, Santa Ynez Band, Santa Ysabel of Iipay Nation, Sycuan Band Tribal Council, the Cocopah Indian Tribe, Torres Martinez Tribal Council and the Viejas Tribal Government.

Describe, in the FEIS, the process and outcome of government-to-government consultation between the BLM and each of the tribal governments within the project area; issues that were raised (if any); and how those issues were addressed in relation to the proposed action and selection of a preferred alternative.

Include a copy of the PA within the FEIS, if available.



## Climate Change

The EPA commends the BLM for devoting a substantive section of the DEIS to greenhouse gases, including detailed estimates of emissions from construction and operation of the Project (pp 3.6-10 – 3.6-12, 3.6-33 – 3.6.34 ). The DEIS does not, however, include a discussion of the potential impacts of climate change on the Project. Considering the Project is planned to have an operational life of at least 50 years, and possibly much longer, the FEIS should include a description of how climate change may affect the Project.

### *Recommendation:*

The FEIS should describe impacts that climate change may have on the Project or on resources also affected by the project. For example, discuss the potential impacts of climate change on the project's sources of groundwater, and on reclamation and restoration efforts after construction and decommissioning. In addition, discuss the anticipated impacts of climate change on sensitive species that would also be affected by the proposed project



Distribution List - address

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